IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SALES TAX REFERENCE NO.1 OF 2000.

The Commissioner of Sales Tax..... Applicant.

vs.

M/s Neelam Applicances .....Respondent.

WITH

SALES TAX REFERENCE NO. 2 OF 2002.

The Commissioner of Sales Tax,
M.S. Mumbai. ..... Applicant.

vs.

M/s Mahavir Metal Industries..... Respondent.

Shri R.A. Harpale, Deputy Commissioner of Sales Tax is present for the Applicant.

Shri P V. Surte for the respondent. (in both matters).

CORAM : V.C.DAGA AND J.P.DEVADHAR,JJ.

DATED : 21.10.2005.

ORAL JUDGMENT (PER V.C.DAGA,J.):

. These two references are forwarded by the Sales Tax Tribunal at the instance of the Revenue for opinion of this Court under section 61 (1) of the Sales Tax Act,1958 ('The Act for short'). Since the issue in both these references are identical, both the references are heard and disposed of by a common judgment. For the sake of convenience we have taken the facts from the case of M/s Neelam Appliances.

Statement of Facts:

2. The respondent-Nilam Appliances is a manufacturer of stainless steel articles registered under the provisions of the Act. The respondent applied to the Commissioner of Sales Tax for determination of the correct rate of tax on the sale of stainless steel water filter, effected under their invoice No. 42/93-94 dated 3.5.1993.

3. It was the contention of the respondent before the Commissioner of Sales Tax as also before the Tribunal that the stainless steel water filter was stainless steel utensil, covered by Schedule Entry C-II-46 covered by Entry No. 145(i) of Notification issued under the provisions of section 41 of the Act, thereby it attracts tax @ 1 per cent.

4. The Commissioner of Sales Tax by order dated 12.7.1993 passed under section 52 held that water filter would fall under the residual entry C-II-102, attracting tax liability @ 10%.

5. The respondent aggrieved by the aforesaid determination invoked appellate jurisdiction of the Tribunal and reiterated their contentions which were canvassed before the Commissioner of Sales Tax. The Tribunal, however, held that the stainless steel water filter was an item of utensil falling in the entry C-II-46 of the Schedule under the Act and covered by entry No. 145(1) of the Act attracting tax at rate of 1%.

Question of Law :

6. Feeling aggrieved by the aforesaid decision, the applicant-Revenue is before us through this reference at the instance of the Tribunal to seek opinion of this Court on the substantial question of law reproduced hereinbelow.

> . Whether on the facts and in the circumstances of the case, was the Tribunal justified in law in holding that the item stainless steel water filter sold by the opponent/ original appellant is an utensil covered by C-II-46 of the schedule to the Bombay Sales Tax Act, 1959 and would be entitled to be covered under Entry No.145(i) of the Notification issued under section 41 of the said Act."

Statutory Provision:

7. Before adverting to rival submissions, it would be profitable to refer to the relevant statutory provisions, which are as under:

. The relevant entry and notification reads as under:

Entry C-II-46:

> . Stainless steel artic utensils other than those specified elsewhere"

Notification Entry 145 (1):

> . Sales or purchase of stainless steel

utensils covered by entry 46 in part II of the Schedule C appended to the Act,of the kind used for household purposes, made during the period from 1.4.1993 to 31.3.1994. (both days inclusive).

Submissions:

. When this matter was called out for hearing,learned Counsel appearing for the Revenue was absent.

8. Shri R.A. Harpale, Deputy Commissioner of Sales Tax, who was present in Court sought an adjournment to make alternate arrangement. Since this matter was adjourned from time to time, we thought it fit not to grant adjournment and chose to hear Shri Harpale, who expressed his willingness to argue this case on behalf of the Department, which he argued with precision dissecting all the relevant provisions of the Act to bring home his view points. We must place our appreciation for his assistance to this Court better than most of the advocates appearing on behalf of the department.

9. Shri Harpale, representing the Revenue submitted that 'water filter' as alleged by the appellant cannot be equated with stainless steel articles and utensils. He submits that water filter

is not only used in kitchen but is also used in the offices and at various other places other than kitchen. He submits that water filter can be made of stainless steel as also it can be of plastic. Therefore, water filter is a class itself. According to him, the said article was required to be treated as the goods covered by schedule entry C-II-46 liable to tax at the rate of 10% under the Act at the relevant time.

10. Shri Harpale, alternatively, submitted that water filter made of stainless steel can be said to be a stainless steel article but by no stretch of imagination, it could be said to be stainless steel utensil used for household purposes. He while elaborating his submission further submits that if comparative study of Schedule Entry C-II-46 and Entry No. 145 (i) in the notification is made it would indicate that only particular kind of stainless steel utensils used for the household purposes are covered by exemption notification attracting reduced rate of tax at 1% as against the schedule rate of tax at 10%

11. Shri Harpale submits that the water filter which is used as filtration system is not a utensil simplicitor. The main function of the product is to filter water and not merely to store it. Merely for

storage of water nobody uses water filter.

12. Shri Harpale further submits that the functional character of the goods is required to be determined before considering whether or not the article falls in a particular taxable entry. He placed reliance on the judgment of this Court in the case of **Atul Glass Industries (P) Ltd. vs. Collector of Central Excise, 63 STR 320 (SC).**

13. Shri Harpale further submits that taxes are levied on the goods and not on the substance. Stainless steel might have been used to manufacture water filter but stainless steel by itself, which is a substance under notification cannot be treated as goods. The water filter by itself has to be treated as goods for the purpose of tax. In support of this submission, he relied upon decision of the Apex Court in the case of **State of Tamil Nadu vs. Pyare Lal Malhotra (1976) STC 319.**

14. Shri Harpale further submits that the exemption notification is required to be construed, as held by the Apex Court in the case of **Rajastan Spinning and Weaving Mills Ltd.vs.Collector of Central Excise, 102 STC 476 (SC)**, in favour of the Revenue in the event of any doubt. In his submission, benefit of doubt must go to the Revenue

while construing the exemption notification. He placed reliance on the judgment of the Apex Court in the case of **Novopan India Ltd.vs.Collector of Central Excise and Customs, 1994(73) ELT 769** and in the case of **Union of India vs. Wood Papers Ltd. 1990 (47) ELT 500 (SC)** in support of his submission.

15. Shri Harpale, thus, submits that the stainless steel water filter is an appliance and not an item of utensil. He also pressed into service the dictionary meaning of the word "household purpose" to demonstrate that utensil is a distict appliance. He, thus, submits that the stainless steel water filter which is an appliance is different than the stainless steel utensil as contemplated in the notification entry No. 145 (1) issued under section 41 of the Act.

16. Lastly, Shri Harpale brought to our notice one of the reported judgments of the Tribunal in the case of Jeevanlal vs. Collector of Central Excuse, 1989(42) ELT 144 (Tribunal) wherein similar question was the subject matter of judicial adjudication. The Tribunal in that case had ruled that water filter pots are not utensils, it cannot be considered as kitchenware.

Per Contra:

17. Shri Surte, learned Counsel appearing for the respondent- assessee contends that stainless steel filter is used for storing drinking water. It is marketed as stainless steel utensil and the same is predominantly used in the kitchen as a kitchenware. According to him, object of the water filter is to store filtered water, though popularly it is called as water filter.

18. Shri Surte turning to the text of the exemption notification submitted that the word "utensil" used in the notification is meant for domestic establishment essentially for home life. He further submits that so far as respondent is concerned, the respondent is selling water filters as utensils as such it has to be treated as utensil. He submits that entry in question needs to be understood in its popular sense.

19. Shri Surte to bring home his submission placed reliance on the judgment of the Madhya Pradesh High Court in the case of M/s Yadav Metal Industries vs.Commissioner of Sales Tax 46 STC 30, wherein the M.P. High Court relying upon ordinary dictionary meaning of the word "utensil" sought to include within its fold "Tagaris" and "Ghamelas" being useful or necessary for household use.

20. Shri Surte also placed reliance on the judgment of the Apex Court in the case of State of U.P. vs. Kores (India) Ltd. (1977) 39 STC 8 (SC), wherein the Apex Court had considered the meaning of "paper" used in the Utter Pradesh Sales Tax Act wherein the Apex Court after referring to various shades of meaning, finally observed at page 11, thus:

> ".... It is thus clear that in popular parlance the word "paper" is understood as meaning a substance which is used for bearing writing or printing, or for packing, or for drawing on, or for decorating , or covering the walls..."

21. Shri Surte, thus, submits that while deciding the question whether or not a particular item would fall in a particular entry, popular parlance test needs to be applied. He also relied upon observations of the Supreme Court in the case of **Maharaja Book Depot v. State of Gujarat AIR 1979 SC 180;** in support of his submission.

22. Shri Surte also pressed into service the judgment of the Apex Court in the case of Ramavatar Budhaiprasad vs. Asst. Sales Tax Officer, Akola, XII STC 286(SC), to reiterate that in order to construe entry it must be construed in its popular sense meaning, " that sense with which people are conversant. He, thus, submits that water filter has

to be construed as an item falling in entry No. C-2-46 and after promulgation of the notification Entry No. 145 (1) as such it has to be treated as exempted article. He, thus, supports the view taken by the Tribunal.

The Issue:

23. The short issue involved herein is whether "stainless steel water filter" is covered by Entry C-II-46 of Schedule to the Act and would be entitled to the benefit of Entry 145 (1) of the notification issued under section 14 of the Act.

Consideration:

24. Having heard rival parties it is not in dispute that the stainless steel water filter is made up of stainless steel fitted with filtering part which forms main factor in its functioning. It is common knowledge that such water filters are found in the kitchen as well as at various other places other than kitchen. It is not exclusively used in the kitchen.

25. The scope of Entry C-II-46 if read in its proper perspective, it embraces stainless steel article and utensils other than those specified

elsewhere. Stainless steel articles and utensils are two different classes of articles may not fall in the category of utensil. All steel utensils will fall in the category of stainless steel articles. Therefore, stainless steel article is a larger concept connected with all stainless steel utensils. If one turns to the scope of entry 145(1) it would be clear that the said entry is narrower are as compared to Schedule Entry C-II-46. Moreover, it covers the transactions effected during the period 1.4.1993 to 31.3.1994 both inclusive. The object of reducing the rate of tax during this period has been with a view to reduce the tax burden in respect of items which are frequently used by the general public in their kitchen for household purposes. Therefore, it would be improper to presume that the stainless steel water filter which is also, usually, made use in the offices or such other places are included in the entry 145(1). As the entry 145 (1) has been cautiously made narrow by the legislature, it follows that the legislature did not extend the benefit of notification to all the items which are otherwise covered under Schedule entry C-II-46. It appears that the legislature intended to include only those stainless steel utensil of the kind used for household purposes wherein there is wear and tear because of their frequent used for the household purposes. In this case the notifications

was issued for extending tax benefit to the class of goods. It is an exception carved out from the general taxing entry. Therefore, it has to be strictly construed. In case of such notification benefit of doubt, if any, has to be given to the Revenue in view of the judgment of the Supreme Court in the case of Novopan India Ltd. vs.Collector of Central Excise 1994 (73) ET 769 (SC) and in the case of Wood Paper Papers Ltd. 1990 (47) ELT 500 (SC). The exemption notification has to be construed strictly in view of the judgment of the Apex Court in the case of Rajastan Spg. Mills (cited supra), Union of India vs Commercial Tax Officer, W.B. (1956) 7 STC 113.

26. The fact that the stainless steel water filters are used for the purposes other than household purposes clearly indicatese that the notification entry 145(1) was not intended to be made applicable to such goods. If it is presumed otherwise, it may lead to anomalous situation. Such interpretation is to be avoided. Therefore, proper interpretion leads to the result that the stainless water filter are out of purview of notification entry 145(1) and therefore those goods do not earned the benefit contemplated therein.

27. The notification entry covers the utensils

made up of stainless steel exclusively. In a stainless steel water filter the main functional part of it used for filtering water is not made of stainless steel. It is not merely a simple utensil. It functions filtering device. The utensils which are used for household purposes are understood to be not doing any functions on there own but those are to be used for the purposes of cooking and related activities. The stainless steel water filter can be said to be an appliance and not a utensil. The dictionary meaning of the utensil is distinct from appliance. This indicates that stainless steel water filter which is an appliance is different than the stainless utensil for household purpose as contemplated under entry 145 (1) of the notification issued under sec. 41 of the Act, 1959.

28. With due respect, it is difficult to go along with the view taken by the M.P. High Court in the case of Yadav (supra). Even if water filter is considered in its popular sense and common parlance test is applied, even then it would not fall in the category of utensil, as sought to be canvassed by the learned Counsel for the assessee. When the consumer buys the article he buys it because it filters water. Otherwise, nobody would go to buy it, treating it as kitchenware or for being used in the kitchen.

. In this view of the matter, the question referred in both the references are answered in favour of the Revenue and against the assessee.

(J.P. DEVADHAR,J.) **(V.C.DAGA,J.)**